IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 366 of 2003

Date of decision: 4th August, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 4.8.2006.

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 366 of 2003

Satya Prasad S/o Sri Bachi Ram Pant,
R/o 309 Ganga Vihar,
Rishikesh, District Dehradun. ……. Appellant

Versus

1. New India Assurance Co.,
   Chandra Shekhar Azad Market,
   Laxmi Nagar, Delhi-92
   Through its Branch Manager.
2. M/s City Harald Co-operative Transport Society Ltd.,
   Mall Road, Nainital,
   Through its Secretary.
3. Rajinder Kumar S/o Megh Raj,
   R/o G-147, P.S. Jahangirpuri,
   Delhi-33.
4. M/s Heena Travels, Mallital,
   Nainital through its Manager. …… Respondents

Mr. L.K. Tewari, Advocate for the appellant.
Mr. T.A. Khan & Mr. Rajesh Joshi, Advocates for respondent No. 1.
None for respondents Nos. 2 to 4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Dehradun vide Award dated 02.08.2003 passed in M.A.C.T. No. 153 of 1998.

2. Appellant / claimant Satya Prasad Pant claimed compensation of Rs. 3,74,000/- for the injuries suffered by him in the motor accident on 18.04.1998 when his Bus bearing registration No. UP07-G-9621 was hit by a private Bus bearing registration No. UP02-C-6143 resulting in multiple serious injuries to the claimant. The claimant further pleaded that, on account of the injuries and the fractures

sustained by him in the accident, he was rendered unfit to pursue his occupation as Bus Driver in U.P. Road Transport Corporation.

3. The owner, driver and the insurer of the private bus bearing registration No. UP02-C-6143 contested the claim and pleaded that the accident took place on account of the negligence of the claimant, himself.

4. The Tribunal, on the evidence led by the parties, held that claimant Satya Prasad Pant sustained injuries in the motor accident on 18.04.1998 and the accident occurred due to the rash and negligence act of the drivers of both the buses.

5. Considering the nature of the injuries suffered by the claimant and the evidence led in regard to the amount spent on treatment, the Tribunal awarded a sum of Rs. 27,000/- towards Medical Expenses and a sum of Rs. 10,000/- towards Physical Pain & Mental Agony. Thus, the total compensation was assessed at Rs. 37,000/-. As the Tribunal found the drivers of both the buses equally responsible for the accident and the claimant, himself, was the driver of one of the two buses, he was found entitled to receive 50% of the above amount of compensation of Rs. 37,000/- as compensation. The Tribunal, therefore, directed the insurer of the private bus bearing registration No. UP02-C-6143 to pay compensation of Rs. 18,500/- along with interest at the rate of 9% per annum from the date of filing of the claim petition to the claimant.

6. Mr. L.K. Tewari, the learned counsel for the appellant vehemently argued that the Tribunal has erred in holding that the appellant also equally contributed to the accident; in assessing low compensation of Rs. 37,000/- only and in not awarding any amount towards Future Treatment.

7. The fact that appellant Satya Prasad Pant sustained injuries in the motor accident on 18.04.1998 was not seriously disputed by the owner, driver and insurer of the private bus bearing registration No. UP02-C-6143 before the Tribunal. That apart, the finding recorded by the Tribunal in that behalf has, now, attained finality, as none of the respondents have filed any appeal the Award.

8. From the evidence available on record, it is established that the appellant suffered multiple fractures in his right leg in the accident. For the treatment of those fractures, his leg was operated upon twice. It has, further, come in his evidence that the appellant had to remain hospitalised for a period of one month. During the period of his hospitalisation and even thereafter, the appellant must have suffered physical pain and mental agony on account of the injuries and the fractures sustained by him in the accident. True, it has come in the evidence of the claimant, himself, that even after the accident, he is continuing to receive the same salary from U.P. Road Transport Corporation as he was receiving before the accident. The compensation of Rs. 37,000/- assessed by the Tribunal, when examined in the context of the above-mentioned broad features of the case, is certainly on the lower side and deserves to be enhanced suitably.

9. In our considered view, a lumpsum of Rs. 50,000/- towards the Medical Expenses and Pain & Suffering would be just and proper compensation in the case and would meet the ends of justice.

10. As we do not find any material to disagree with the finding recorded by the Tribunal that the appellant, himself, also equally contributed to the accident, the appellant would be entitled to receive only 50% of the above amount of compensation of Rs. 50,000/- i.e. Rs. 25,000/- only.

11. For the foregoing reasons, the appeal filed by the appellant under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Tribunal is allowed in part. The compensation of Rs. 18,500/- awarded by the Tribunal is enhanced to Rs. 25,000/-. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of the application.

12. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
04.08.2006 04.08.2006

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